DATUK AMAR JAMES WONG KIM MIN & ANOR

v.

DATO' SRI PETER TINGGOM KAMARAU & ORS

HIGH COURT SABAH & SARAWAK, KUCHING
RICHARD MALANJUM J
[SUIT NO: 22-76-2002-I]
19 JULY 2002

CIVIL PROCEDURE: *Injunction - Ex parte injunction - Setting aside - Whether O. 29 r. 1(2A) Rules of the High Court 1980 complied with - Disputes in a political party - Whether court has jurisdiction - Availability of domestic remedies and s. 18(C) of the Societies Act 1966 - Whether balance of convenience tilts in not continuing with ex parte injunction*

The first plaintiff was the president and the second plaintiff was the secretary general of the Sarawak National Party (the Party) respectively. During the first plaintiff's absence, there was a gathering of members of the Party where resolutions were passed for the first plaintiff to step down and the second plaintiff to be sacked. It was the first plaintiff's version that he had never left the presidency of the Party and thus he was the only one in a position to give instructions for the purpose of convening meetings and other affairs of the Party, but the deputy president of the Party ('the first defendant') argued that he was the acting president of the Party during the first plaintiff's absence. Therefore, the first defendant had issued a notice of meeting of the Central Executive Committee and during the purported meeting aforesaid it was decided that a National Council meeting be held on 9 June 2002. It was the thrust of the application for an *ex parte* injunction by the plaintiffs that the planned meeting of the National Council was illegal and that the defendants' activities were contrary to the provisions of the Party's constitution.

In their application to set aside the *ex parte* injunction the defendants relied on several grounds which were: (1) that the plaintiffs failed to comply with O. 29 r. 1(2) and (2A) of the Rules of the High Court 1980 ('RHC') in relation to the application; (2) that there was a provision in the constitution of the Party providing for the reference of disputes to the Registrar of Societies for resolution, hence the plaintiffs should exhaust them first before coming to court and (3) that the court has no jurisdiction to entertain the application of the plaintiffs as the matter was one involving a political party and s. 18(C) of the Societies Act 1966 ('the Act') barred such matter to be brought to court for adjudication.

Held:

[1] Although there were some attempts to comply with O. 29 r. 1(2) and (2A) of the RHC, ('the rule') there was no statement to indicate that the defendants were informed of the application and if not why that was not done. The application was therefore made quietly and there was not even an explanation given to the judicial commissioner for the need to have the application heard *ex parte* instead of *inter parte*. There was a failure on the plaintiffs' part to strictly comply with the said rule. (p 389 b & c-d)

[2] If the apprehension was indiscipline and chaos within the Party there are ways to deal with it as provided in the constitution of the Party. The court should not be used to resolve the leadership crisis of the Party or to secure a form of endorsement on the positions of the leaders therein. The court should not be dragged into a situation where at the end of the day its decision might be in conflict with the desire of the majority of the members of the Party. In any event, there was nothing stated in the affidavits filed by the plaintiffs that irreparable loss would be suffered by them or the Party if the *ex parte* order were to be set aside. Therefore, the issues faced by the Party should be left to it for resolutions. (p 389 f-g)

[3] The main complaint of the plaintiffs was that the defendants were about to call a meeting of the National Council of the Party pursuant to a decision of the Central Executive Committee presided by the first defendant during the first plaintiff's absence. However, in a subsequent meeting held on 7 June 2002 presided by the first plaintiff, the earlier decision was reversed. Hence it was an indication that the earlier decision was recognised as a decision of the party. There were therefore two decisions made by the Central Executive Committee pertaining to the calling of a meeting of the National Council of the Party. And being decisions of a political party, s. 18(C) of the Societies Act 1966 is therefore relevant. In view of the clear words used therein, granting an interim injunction would therefore tantamount to ignoring a statutory provision. Furthermore, by allowing the *ex parte* injunction to continue would indirectly mean an endorsement of the second decision and that itself would have been contrary to s. 18(C) of the Act. Order 29 r. 1(2C) of the RHC was also referred to as a provision disallowing the granting of the *ex parte* injunction. (pp 390 c-f & 391 f)

[Ex parte injunction set aside.]

Case(s) referred to:
Motor Sports International Ltd (Servants or Agents At Federal Territory of Labuan) & Ors v. Delcont (M) Sdn Bhd [1996] 3 CLJ 483 CA ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 29 r. 1(2A)(c), (2C)
Societies Act 1966, s. 18C

For the plaintiffs - Albert Tang; M/s Chew Jugah Wan Ullok & Co
For the defendants - MS Sandhu; M/s Sandhu & Co, Henry Ling; M/s Ling & Wong, Libat Langub; M/s Dr Yaacob & Ismail; Chambai Lindong; M/s Baru Bian & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Richard Malanjum J:
On 14 June 2002 I set aside an *ex parte* injunction obtained by the plaintiff against the defendants. In doing so I said this:

> Having read the materials before me and having heard learned counsel for the parties I am of the view that the *ex parte* injunction granted on 7.6.2002 should and is hereby set aside.
>
> Though there are triable issues in this case there are several points which compel me to come to my decision as such. Briefly, they are, *inter alia*, the non-compliance by Plaintiffs to O. 29(1), (2A) of the RHC 1980; the balance of convenience tilts in not continuing with the *ex parte* injunction; the availability of domestic remedies and section 18C of the Societies Act (as amended).
>
> Thus, I grant prayers (1) and (2) of Encl. 22.
>
> I will give my full grounds in the event of an appeal. Costs to the Defendants/ Applicants to be taxed unless agreed.

By way of summons in chambers dated 7 June 2002 (encl. 6) accompanied by a Certificate of Urgency (encl. 6) the plaintiffs had applied for an *ex parte* injunction against the defendants seeking for the following orders, namely:

> (1) An order that the Defendants, their servants(s) and/or agent(s) be restrained by an interlocutory injunction from exercising the role, power and authority of the 1st and 2nd Plaintiffs as the President and Secretary-General, respectively, of SNAP including, but not limiting to the convening of any Central Executive Meeting, National Council Meeting or Triennial General Assembly Meeting, giving of press releases on SNAP affairs and issuing of Notices in place of the 1st and 2nd Plaintiffs concerning SNAP;

(2) Further and/or alternatively, an order that the Defendants, their servant(s) and/or agent(s) be restrained by an interlocutory injunction from presiding in any Central Executive Meeting, National Council Meeting or Triennial General Assembly Meeting as concerns SNAP, in particular, the purported National Council Meeting which the 1st Defendant has decided to preside and hold on 09.06.2002 ("the N.C. meeting"), until after the trial of this action or until further Order of Court;

(3) An order for costs of this application; and

(4) Such further or other reliefs as this Honourable Court deems fit and just.

The application was heard by the learned Judicial Commissioner on the same date and the orders as prayed for were granted. The return date was 26 June 2002. The notes of proceeding for that hearing read:

7th JUNE 2002 (FRIDAY)

Mr. Albert Tang and Mr. Collin Jarraw for plaintiff

Enclosure (6)

Certificate of urgency is enclosure (5).

Sgd. (Dato' Zakaria bin Sam)

Mr. Albert

An *ex parte* Application for injunction:

(i) Whether the Deputy President can call for a CEC meeting?

(ii) Whether he called the National Council Meeting on 9.6.2002?

(iii) The National Council Meeting does not specify the agenda of the meeting except to say to discuss the current crisis of the party but crisis not identified,

(iv) Indication from press report that the National Council Meeting is to topple or trying to topple the President or to resign.

– is this one of the agenda or the possibility it would cause unruly meeting due to absence of agenda. It is not a properly organised meeting.

(v) It may result in great harm to the party and the plaintiffs.

If injunction is granted the effect is to maintain *status quo* until the matter is properly ventilated in the hearing proper. (*Keet Gerald Francis Noel John v. Mohd Noor b. Abdullah & Ors* [1995] 1 CLJ 293.)

Sgd. (Dato' Zakaria bin Sam)

Court:

Order in Term.

Adjourned to 26.6.2002 at 10.00 a.m.

Sgd. (Dato' Zakaria bin Sam).

On 12 June 2002 the defendants filed in an application by way of summons in chambers (encl. 22) accompanied by a Certificate of Urgency (encl. 20) to set aside the *ex parte* order. To save time I therefore advanced the return date of encl. 6 to coincide with the hearing of encl. 22.

For encl. 6 it was supported by the affidavits of 1st plaintiff Datuk James Wong Kim Min affirmed on 6 June 2002 (encl. 7) (Wong's first affidavit) and that of the 2nd plaintiff Datuk Justine Jinggut affirmed on 6 June 2002 (encl. 8) (Jinggut's first affidavit).

Enclosure 22 was supported by the affidavits of Dato' Sri Peter Tinggom Ak Kamarau affirmed on 11 June 2002 annexed thereto (Tinggom's first affidavit) and the affidavit of Dr. Judson Sakai Tagal affirmed on 13 June 2002 (encl. 49) (Judson's affidavit).

Subsequent affidavits were also filed in by the plaintiffs, namely, by the 1st plaintiff affirmed on 12 June 2002 (encl. 29) (Wong's second affidavit) and on 13 June 2002 (encl. 39B) (Wong's third affidavit) while the 2nd plaintiff filed further affidavits affirmed on 12 June 2002 (encl. 30) (Jinggut's second affidavit) and on 13 June 2002 (encl. 33) (Jinggut's third affidavit).

There was hardly any dispute on the following facts, namely:

(i) that the 1st plaintiff was elected the President of the Parti Kebangsaan Sarawak or Sarawak National Party (SNAP) (the party) for the years 2000-2003;

(ii) that the party is a registered political party under the Societies Act 1966;

(iii) that the 2nd plaintiff was appointed the Secretary General for the party for the years 2000-2003 and under its constitution is deemed its public officer;

(iv) that the 1st defendant was elected as the Deputy President of the Party for the years 2000-2003 while some of the other defendants are its Vice Presidents.

(v) that the 1st plaintiff did go to Sydney Australia in April 2002 and returned home on 5 June 2002;

(vi) that there was a gathering of members of the party held in Sibu and Miri whereby resolutions were passed, *inter alia*, for the 1st plaintiff to step down and that the 2nd plaintiff should be sacked as the Secretary General;

(vii) that there were conflicting instructions pertaining to the convening of a meeting of the Central Executive Committee of the party;

(viii) that it was the version of the 1st plaintiff that he never left the Presidency of the party and thus he was in the position to give instructions for the purpose of convening meetings and other affairs of the party;

(ix) that it was the version of the 1st defendant that the 1st plaintiff was absent while in Australia and hence he was the acting President of the party;

(x) that the 1st defendant purporting to act as the Acting President of the party instructed the 2nd plaintiff to issue a notice of meeting of the Central Executive Committee but that instruction was not carried out by the 2nd plaintiff;

(xi) that as a result of the failure of the 2nd plaintiff to comply with the instruction of the 1st defendant the latter proceeded to issue a notice dated 24 May 2002 calling for a meeting of the Central Executive Committee scheduled on 29 May 2002;

(xii) that during the purported meeting aforesaid it was decided that a National Council meeting be held on 9 June 2002. Notice to that effect was therefore issued;

(xiii) that it was the purported scheduled meeting of the National Council that triggered the plaintiffs to apply for the *ex parte* injunction; and

(xiv) that there was in fact a meeting of the Central Executive Committee called by the 1st plaintiff on 7 June 2002 during which the decision made in the earlier meeting of the Committee presided by the 1st defendant was revoked.

In summary the thrust of the application for injunction by the plaintiffs was that the planned meeting of the National Council on 9 June 2002 was illegal and that the activities of the defendants were also illegal and contrary to the provisions of the party's constitution and thus threatening the tranquility and unity of the party and poised to set a dangerous precedent in terms of discipline in a political party. It was also alleged that the several press statements issued by the group gave misleading information on the party.

In their application to set aside the *ex parte* injunction the defendants relied on several grounds, *inter alia*:

(i) that there was a failure to comply with the provision 1 of O. 29(1), (2A)(c) and r. 1(2C) of the Rules of the High Court 1980 (RHC) in relation to an application for *ex parte* injunction;

(ii) that there is a provision in the constitution of the party providing for the reference of disputes to the Registrar of Societies for resolution;

(iii) that the court has no jurisdiction to entertain the application of the plaintiffs as the matter is one involving a political party and s. 18C of the Societies Act 1966 (the Act) barred such matter to be brought to court for adjudication;

(iv) that there are domestic remedies available under the party's constitution and hence the plaintiffs should exhaust them first before coming to court; and

(v) that the undertaking given was ambiguous.

In response learned counsel for the plaintiffs admitted that s. 18C of the Act was not brought to the attention of the learned judicial commissioner during the hearing of the *ex parte* application. And he also said this:

> Order 29 Rule 1(2C) RHC 1980 concerns the stopping of society, body corporate.
>
> The issue here is: is the planned meeting a properly convened meeting?
>
> The decision of the Defendants' group is not a decision of a political party. Hence Court's jurisdiction not ousted.
>
> The convening of the meeting was illegal. Deputy President cannot usurp the power of President.
>
> If no injunction granted then there will be indiscipline, confusion in the sense of a rival body purportedly claiming to be the lawful authority to convene a meeting and chaos will result from confusion in that who will call the shot. The power of 1st Plaintiff being usurped. Somebody claiming his power when he has told the whole world that no such authority to do so.
>
> The 2nd Plaintiff is suing on behalf of the party.
>
> The harm to them according to Defendant – refer para. 32 of Encl. 22. Only inconvenience to them.
>
> Damages to Plaintiff cannot be compensated in term of monetary compensation.
>
> The *status quo* to be maintained as pre 9th June 2002. Public interest to consider.

Now it is trite law that in an application for an *ex parte* injunction the rule is quite stringent in that there must be strict compliance with the provision of O. 29 r. 1(2A) of RHC. In the case of *Motor Sports International Ltd (Servants or agents at Federal Territory of Labuan) & Ors v. Delcont (M) Sdn Bhd* [1996] 3 CLJ 483 it was held that:

> The provisions of O. 29 r. 2A were introduced by amendment in order to ensure that *ex parte* injunctions of any sort were not granted willy-nilly, but only in cases where they were truly called for. In order to ensure that the policy behind the introduction of r. 2A is not defeated, high courts must demand strict compliance with its terms. More so, when the relief applied for is in the nature of a Mareva or an Anton Piller type of injunction because of the incalculable harm and damage that may be caused to a defendant by the grant of either of these orders.
>
> Having perused the affidavit in question, we find that there has not been even a feeble attempt to meet the requirements of r. 2A, especially sub-paragraph (d) thereof. On this ground alone, the *ex parte* injunction ought to have been dissolved by the learned judge, per Gopal Sri Ram at page 611.

And O. 29 r. 1(2) and (2A) reads:

> (2) Where the applicant is the plaintiff and the case is one of urgency such application may be made *ex parte* by summons supported by an affidavit but, except as aforesaid, such application must be made by summons.
>
> (2A) The affidavit in support shall contain a clear and concise statement: [Ins. P.U. (A) 364/93] of the facts giving rise to the claim against the defendant in the proceedings;
>
> (a) of the facts giving rise to the claim against the defendant in the proceedings;
>
> (b) of the facts giving rise to the claim for the interlocutory relief;
>
> (c) of the facts relied on as justifying application *ex parte*, including details of any notice given to the defendant or, if none has been given, the reason for giving none;
>
> (d) of any answer asserted by the defendant (or which he is thought likely to assert) either to the claim in the action or to the claim for interlocutory relief;
>
> (e) of any facts known to the applicant which might lead the Court not to grant relief *ex parte*;

(f) of whether any previous similar *ex parte* application has been made to any other Judge, and if so, the order made in that previous application; and

(g) of the precise relief sought.

On perusal of the affidavits in support of the *ex parte* injunction I am inclined to agree with learned counsel for the defendants that although there were some attempts to comply with the said rule, there was no statement to indicate that the defendants were informed of the application and if not why that was not done. Paragraphs 27, 28 and 29 of Wong's first affidavit addressed the requirements of the said rule but failed to state the reason for failing to give any notice to the defendants on the application. Further there was also a failure to present fully the probable argument the defendants might raise such as the applicability of s. 18C of the Act. In my view the application was therefore made quietly and there was not even an explanation given to the learned judicial commissioner for the need to have the application heard *ex parte* instead of *inter parte*. There was therefore a failure on the part of the defendants to strictly comply with the said rule. And on this ground alone that I found the *ex parte* injunction should be set aside.

From the undisputed facts of this case I found that there were serious questions to be tried such as whether the 1st plaintiff was in fact absent from Sarawak so as to warrant the 1st defendant to assume the presidency. However, based on the reasons given for the need of an injunction to be issued as outlined by learned counsel for the plaintiffs in his submissions I found that the balance of convenience tilted in favour of not extending the *ex parte* order. If the apprehension is indiscipline and chaos within the party there are ways to deal with it as provided in the constitution of the party. The court should not be used to resolve the leadership crisis of the party or to secure a form of endorsement on the positions of the leaders therein. The court should not be dragged into a situation where at the end of the day its decision might be in conflict with the desire of the majority of the members of the party. In any event there was nothing stated in the affidavits filed by the plaintiffs that irreparable loss would be suffered by them or the party if the *ex parte* order were to be set aside. Furthermore the 1st plaintiff has returned to Sarawak and thus the fear that the 1st defendant would continue to act as the President of the party should no longer arise.

Moreover, it was the contention of the plaintiffs that the defendants' actions were or would not be within the constitution of the party and that the elected office bearers were and are still in the office. If that were the case then there should be no cause for the plaintiffs to be unduly worried. I was therefore in agreement with the stand of the defendants that the issues faced by the party should be left to it for resolutions.

Section 18C of the Act 1966 in my view is also relevant to the present case. That section reads:

> 18C. Decision of political party to be final and conclusive.
>
> The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

The main complaint of the plaintiffs was that the defendants were about to call a meeting of the National Council of the party pursuant to a decision of the Cental Executive Committee presided by the 1st defendant. However in a subsequent meeting of the Cental Executive Committee held on 7 June 2002 presided by the 1st plaintiff – para. 12 of Wong's 2nd affidavit – the earlier decision was reversed. Hence it was an indication that the earlier decision was recognised as a decision of the party. Otherwise there was no necessity to consider it at all if it was just a resolution made by a group which had no official status under the constitution of the party. There were therefore two decisions made by the Cental Executive Committee pertaining to the calling of a meeting of the National Council of the party. And being decisions of a political party s. 18C is therefore relevant. In view of the clear words used therein granting an interim injunction would therefore tantamount to ignoring a statutory provision. Furthermore, by allowing the *ex parte* injunction to continue would indirectly mean an endorsement of the second decision and that itself would have been contrary to s. 18C of the Act. On this ground as well that I allowed the application of the defendants to set aside the *ex parte* injunction.

Learned counsel for the defendants also submitted that the constitution of the party provided at least two options to resolve any dispute within the party. One is by way of reference to arbitration and the other is for the National Council of the party to deal with it. And having considered the respective contentions of the parties on this point I was inclined to agree with the defendants that indeed it would have been opened for the plaintiffs to act according to the relevant provisions in the constitution and the rules made thereunder instead of coming to court for an injunction. No reason was given why the plaintiffs being the current office bearers could not resort to the internal mechanism of the party to resolve the dispute. And injunction being a

discretionary remedy the balance is against the granting of it in view of the availability of the mechanism within the constitution and regulations of the party to resolve any dispute thereof.

Order 29 r. 1(2C) of the RHC was also referred to as a provision disallowing the granting of the *ex parte* injunction. It reads:

> (2C) Notwithstanding paragraph (2) of this rule, a Judge shall not grant an injunction on an *ex parte* application if the effect is to stop the holding or progress of a meeting of a body corporate, a society, an association, a union, an organisation, a club or a body of persons whatsoever named.

It is not in dispute that the party is a registered society under the Act. Further, there was no doubt that the aim of the *ex parte* injunction was to stop the proposed meeting of the National Council of the party scheduled on 9 June 2002 pursuant to the decision of the Central Executive Committee presided by the 1st defendant. Thus, it would appear to be directly contrary to r. 1(2C). For the plaintiffs it was contended that the said rule had no application since the proposed meeting was illegal and contrary to the constitution of the party.

With respect that line of argument envisaged the court to determine at this early stage of the action the legality of the calling of the proposed meeting. In my view however, the validity of the proposed meeting would be quite irrelevant at this juncture. After all there is no expression of legislative intent that the rule only applies to properly constituted meeting. If that were the case then before that rule can effectively be applied the question of validity of the calling of a proposed meeting would have to be made first. That would render that rule meaningless as by the time such ruling is made events might have overtaken the need for an injunction.

Accordingly r. 1(2C) was another reason for my allowing the application of the defendants.

I did also consider the other points raised by both sides and suffice it to say that for the reasons given above I did not think it was necessary for me to deal with each one of them. At any rate none of those points raised by the plaintiffs swayed me to rule otherwise to the application of the defendants.

Accordingly I granted prayers (1) and (2) of encl. 22 and awarded costs to the defendants to be taxed unless agreed.